

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED

AUG 04 2005

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

DONNA M. McDILDA,

Plaintiff,

v.

JO ANNE B. BARNHART, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

CIVIL ACTION No. 6:04-CV-00036

ORDER AND OPINION

JUDGE NORMAN K. MOON

By standing order of the Court, this case was referred to the Honorable Michael F. Urbanski, United States Magistrate Judge, for proposed findings of fact and a recommended disposition. The Magistrate filed his report on April 8, 2005, recommending that this Court enter an Order granting the Social Security Commissioner's Motion for Summary Judgment.

Plaintiff filed objections to the Report and Recommendation on April 19, 2005. Said objections having been appropriately lodged, this Court must undertake a *de novo* review of the case. *Orpiano v. Johnson*, 687 F.2d 44, 48 (4th Cir. 1982). After a thorough examination of the party's objections, the supporting memoranda, the applicable law, the documented record, and the Report and Recommendation, this Court overrules all objections.

Plaintiff specifically alleges that Magistrate Judge Urbanski used the incorrect standard to determine whether Plaintiff's depression is severe. Plaintiff asserts that instead of determining

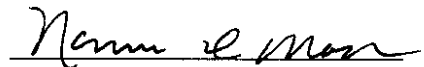
whether there was substantial evidence to support the decision of the Administrative Law Judge ("ALJ") that Plaintiff's depression is not severe, the magistrate judge analyzed whether there was substantial evidence to support the ALJ's decision that Plaintiff was capable of substantial gainful activity for a period of twelve months or more.¹ Assuming *arguendo* that Plaintiff's assertion is correct, the Court is still able to ascertain from the Report and Recommendation that substantial evidence exists to support the ALJ's decision that Plaintiff's depression is non-severe and therefore is also able to agree with the Report and Recommendation that there is substantial evidence to support the ALJ's decision that Plaintiff is capable of substantial gainful activity for at least twelve months. Therefore, any alleged error on the part of the magistrate judge is harmless.

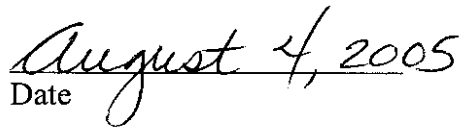
Accordingly, it is this day ORDERED that the Report and Recommendation of the United States Magistrate Judge filed August 13, shall be, and hereby is, ADOPTED, in its entirety.

This case is dismissed and stricken from the docket of the Court.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED:


U.S. District Judge


Date

¹ Since disability is defined as the inability "to do any substantial gainful activity . . . which has lasted or can be expected to last for a continuous period of not less than 12 months," a decision as to the severity of the alleged disability is a necessary step in the general inquiry of disability. 20 C.F.R. § 404.1505; 20 C.F.R. § 404.1520.